

FILED/ACCEPTED
Before the
FEDERAL COMMUNICATIONS COMMISSION DEC - 4 2007
Washington, D.C. 20554

Federal Communications Commission
Office of the Secretary

In the Matter of)	EB Docket No. 07-197
)	
Kurtis J. Kintzel, Keanan Kintzel, and all)	File No. EB-06-IH-5037
Entities by which they do business before the)	FRN: 0007179054
Federal Communications Commission)	NAL/Acct. No. 200732080029
)	
Resellers of Telecommunications Services)	

To: Richard L. Sippel
Chief Administrative Law Judge

**ENFORCEMENT BUREAU'S MOTION FOR RULING ON
OBJECTIONS BY AVATAR ENTERPRISES, INC. TO REQUEST
FOR ADMISSIONS OF FACT AND GENUINENESS OF DOCUMENTS**

1. On October 31, 2007, the Bureau served its Request for Admissions of Facts and Genuineness of Documents to Avatar Enterprises, Inc. ("Request"). On November 14, 2007, Avatar Enterprises, Inc. ("Avatar") served its response on the Bureau, wherein it objected to admission numbers 14-21.¹ The Bureau diligently sought a resolution of this issue through negotiation with counsel for Avatar to no avail. Pursuant to Section 1.246(b) of the Commission's rules and the authority granted by the Presiding Judge at the prehearing conference in this proceeding,² the Bureau hereby respectfully requests the Presiding Judge to issue an order denying Avatar's objections and directing Avatar to either admit or deny the subject admissions. In support whereof, the following is shown:

2. In response to admission numbers 14 through 21, Avatar stated:

¹ Copies of the Bureau's request and Avatar's response are attached hereto as Exhibits 1 and 2.

² Transcript of Proceedings, November 15, 2007, at 36-37.

No. of Copies rec'd 076
List ABCDE

Objection; the question is improper because Avatar Enterprises, Inc., is not bound by the Consent Decree. The Company is not subject to FCC oversight, thus the FCC exceeded its subject matter jurisdiction by attempting to bind Avatar Enterprises, Inc., to the Consent Decree. The party objects to the definition of "Avatar" provided by the Enforcement Bureau, as stated in the Answer to question 1.

3. There is no merit to Avatar's objections. Each of the admissions to which Avatar objects relates to a consent decree which underlies the instant hearing and which was specifically referenced in the Order to Show Cause in this proceeding.³ Indeed, the Order to Show Cause contains issues relating directly to the consent decree.⁴ The Consent Decree, a copy of which also is attached hereto and of which the Presiding Judge may take official notice, bound a number of entities, specifically including Avatar, and identified Kurtis and Keanan Kintzel, named parties in the instant hearing, as principals of Avatar.⁵

4. While Avatar may argue at hearing the extent to which it was subject to the terms and conditions of the consent decree, there is no question that the company is among those included as parties in the instant hearing proceeding. As such, it is required to admit or deny each and every admission propounded by the Bureau unless it has a legitimate objection. The admissions directed to Avatar relating to the referenced consent decree relate directly to issues specified in this proceeding and are not improper for the reasons advanced by the company. To the contrary, the admissions are entirely appropriate and relevant, and, if properly answered, will serve to expedite this hearing.

³ *Kurtis J. Kintzel, et al.*, Order to Show Cause and Notice of Opportunity for Hearing, FCC 07-197 (Released September 10, 2007), at paras. 4-6, 9-14, 17-18, 20, 24(a)-(d).

⁴ *See id.* at para. 24(a)-(d).

⁵ *See* Consent Decree, ¶ 2.

5. Based on the foregoing, the Bureau respectfully requests the Presiding Judge to issue an order denying Avatar's objections and directing Avatar to either admit or deny admission numbers 14-21.

Respectfully submitted,
Kris Anne Monteith
Chief, Enforcement Bureau

A handwritten signature in black ink, appearing to read "Michele Levy Berlove". The signature is fluid and cursive, with the first name "Michele" being the most prominent.

Michele Levy Berlove
Attorney
Investigations and Hearings Division

Federal Communications Commission
445 12th Street, S.W., Room 4-C330
Washington, D.C. 20554
(202) 418-1420

December 4, 2007

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILED/ACCEPTED

OCT 31 2007

Federal Communications Commission
Office of the Secretary

In the Matter of)	EB Docket No. 07-197
)	
Kurtis J. Kintzel, Keanan Kintzel, and all)	File No. EB-06-IH-5037
Entities by which they do business before)	NAL/Acct. No. 200732080029
the Federal Communications Commission)	
)	FRN No. 0007179054
)	

To: Avatar Enterprises, Inc.

**ENFORCEMENT BUREAU'S REQUEST FOR ADMISSION OF FACTS
AND GENUINENESS OF DOCUMENTS TO AVATAR ENTERPRISES, INC.**

The Enforcement Bureau (the "Bureau"), pursuant to section 1.246 of the Commission's Rules, 47 C.F.R. § 1.246, hereby requests that, within 10 days of service of this request, Avatar Enterprises, Inc. ("Avatar"), admit to the truth of the following facts and genuineness of the attached documents, as set forth in the following numbered paragraphs. Each response shall be labeled with the same number as the subject admission request and shall be made under oath or affirmation of the person providing the response.

Definitions

For this document, the following definitions apply:

"Avatar" means Avatar Enterprises, Inc., any affiliate, d/b/a, predecessor-in-interest, parent company, wholly or partially owned subsidiary, successor-in-interest or other affiliated company or business, including but not limited to, BOI, Buzz Telecom and US Bell, and all directors, officers, employees, shareholders or agents, including consultants and any other persons working for or on behalf of any of the foregoing during the period February 11, 2004 through the present, unless otherwise noted.

"BOI" means Business Options, Inc., any affiliate, d/b/a, predecessor-in-interest, parent company, wholly or partially owned subsidiary, successor-in-interest or other affiliated company or business, including but not limited to, Avatar, Buzz Telecom and US Bell, and all directors, officers, employees, shareholders or agents, including consultants and any other persons working for or on behalf of any of the foregoing during the period February 11, 2004 through the present, unless otherwise noted.

"Buzz" means Buzz Telecom Corporation, any affiliate, d/b/a, predecessor-in-interest, parent company, wholly or partially owned subsidiary, successor-in-interest or other affiliated company or business, including but not limited to, BOI, Avatar and US Bell, and all directors, officers, employees, shareholders or agents, including consultants and any other persons working for or on behalf of any of the foregoing during the period February 11, 2004 through the present, unless otherwise noted.

"Commission" means Federal Communications Commission.

"Companies" means BOI, Buzz, Avatar and US Bell, or any one of those entities.

"US Bell" means U.S. Bell, Inc., its successor Link Technologies, any affiliate, d/b/a, predecessor-in-interest, parent company, wholly or partially owned subsidiary, successor-in-interest or other affiliated company or business, including but not limited to, BOI, Avatar and Buzz, and all directors, officers, employees, shareholders or agents, including consultants and any other persons working for or on behalf of any of the foregoing during the period February 11, 2004 through the present, unless otherwise noted.

Admissions

1. Avatar is bound by a consent decree between the Commission and BOI dated on or about February 13, 2004 (the "Consent Decree") in connection with a proceeding under EB Docket No. 03-85.

2. Kurtis J. Kintzel is a director of Avatar.

3. Kurtis J. Kintzel has been a director of Avatar during the period February 11, 2004 through the present.

4. Kurtis J. Kintzel holds a 72 percent equity interest in Avatar.

5. Kurtis J. Kintzel has held a majority equity interest in Avatar from February 11, 2004 through the present.

6. Keanan Kintzel is a director of Avatar.

7. Keanan Kintzel has been a director of Avatar during the period February 11, 2004 through the present.

8. Keanan Kintzel holds a 26 percent equity interest in Avatar.

9. Keanan Kintzel has held a minority equity interest in Avatar from February 11, 2004 through the present.

10. Avatar was an affiliate of BOI during the period February 11, 2004 through the present.

11. Avatar was an affiliate of Buzz during the period February 11, 2004 through the present.

12. Avatar was an affiliate of US Bell during the period February 11, 2004 through the present.

13. Avatar, BOI, Buzz, US Bell and Link Technologies have been affiliates during the period February 11, 2004 through the present.

14. Avatar has not made all monthly payments toward the voluntary contribution due under the terms of the Consent Decree.

15. The Companies have not made all monthly payments toward the voluntary contribution due under the terms of the Consent Decree.

16. Avatar failed to make the payment toward the \$510,000 voluntary contribution that was due in June 2005.

17. The Companies failed to make the payment toward the \$510,000 voluntary contribution that was due in June 2005.

18. Avatar failed to make the payments toward the \$510,000 voluntary contribution that were due in each of August 2005 through April 2006.

19. The Companies failed to make the payments toward the \$510,000 voluntary contribution that were due in each of August 2005 through April 2006.

20. Avatar has made no payments toward the \$510,000 voluntary contribution since its May 2006 installment payment.

21. The Companies have made no payments toward the \$510,000 voluntary contribution since the May 2006 installment payment.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Michele Levy Berlove", is written over a horizontal line.

Kris Anne Monteith
Chief, Enforcement Bureau

Michele Levy Berlove
Attorney, Investigations and Hearings Division

Judy Lancaster
Attorney, Investigations and Hearings Division

Federal Communications Commission
445 12th Street, S.W., Room 4-C330
Washington, D.C. 20554
(202) 418-1420
October 31, 2007

CERTIFICATE OF SERVICE

Rebecca Lockhart, a Paralegal Specialist in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has, on this 31st day of October, 2007, sent by first class United States mail copies of the foregoing **Enforcement Bureau's Request for Admission of Facts and Genuineness of Documents to Avatar Enterprises, Inc.** to:

Catherine Park, Esq.
2300 M Street, NW, Suite 800
Washington, D.C. 20037

Counsel for Kurtis J. Kintzel, Keanan Kintzel, Business
Options, Inc., Buzz Telecom Corporation, US Bell, Inc., Link
Technologies and Avatar Enterprises

A copy of the foregoing was also served via hand-delivery to:

Administrative Law Judge Richard L. Sippel
Federal Communications Commission
445 12th Street, S.W., Room 1-C861
Washington, D.C. 20054



Rebecca Lockhart

EXHIBIT 2

THE LAW OFFICE OF CATHERINE PARK

2300 M STREET, NW
SUITE 800
WASHINGTON, D.C. 20037

PHONE: (202) 973-6479
FAX: (866) 747-7566

E-MAIL: CATHERINE.PARK@CPARKLAW.COM
WEBSITE: WWW.CPARKLAW.COM

November 14, 2007

Marlene H. Dortch
Secretary
Federal Communications Commission
236 Massachusetts Avenue, NE
Suite 110
Washington, D.C. 20002

FILED/ACCEPTED

NOV 14 2007

Federal Communications Commission
Office of the Secretary

RE: Answers to Request for Admissions, Avatar Enterprises, Inc.; EB Docket No. 07-197

Dear Madame Secretary:

Enclosed for filing on behalf of parties Kurtis J. Kintzel, Keanan Kintzel, and all other Entities by which they do business before the Federal Communications Commission, is the original and 6 copies of the Answers to the Enforcement Bureau's Request for Admission of Facts and Genuineness of Documents to Avatar Enterprises, Inc., in the above-referenced matter.

Sincerely,

Catherine Park, Esq.

Catherine Park, Esq.

Enclosures: Original + 6 Copies

NOV 15 2007 046
FBI

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Kurtis J. Kintzel, Keanan Kintzel, and all) EB Docket No. 07-197
Entities by which they do business before the)
Federal Communications Commission)
)
Resellers of Telecommunications Services)
)
To: Presiding Officer, Richard L. Sippel)
(Chief ALJ))

FILED/ACCEPTED
NOV 14 2007
Federal Communications Commission
Office of the Secretary

**ANSWERS TO ENFORCEMENT BUREAU'S REQUEST FOR ADMISSION OF FACTS
AND GENUINENESS OF DOCUMENTS TO AVATAR ENTERPRISES, INC.**

The party, by his undersigned counsel, hereby answers the Request for Admissions and Genuineness of Documents propounded by the Enforcement Bureau as follows:

- a. The information supplied in these Answers is true to the best of the party's knowledge, information, and belief;
- b. The word usage and sentence structure may be those of the attorney who in fact prepared these Answers and does not purport to be that of the executing party; and
- c. Discovery is not complete; the party reserves the right to supplement its Answers if additional information comes to its attention.

Answers

1. "Avatar is bound by a consent decree between the Commission and BOI dated on

or about February 13, 2004 (the "Consent Decree") in connection with a proceeding under EB Docket No. 03-85."

Answer: Denied, with respect to Avatar Enterprises, Inc., which cannot be bound by the Consent Decree because **Avatar Enterprises, Inc., never sold telecommunications services or telephone service, and should never have been subject to FCC oversight.** To the extent that the Consent Decree suggests that Avatar Enterprises, Inc., ever acted as a carrier or telecommunications provider or reseller, the Consent Decree contains incorrect information. Avatar Enterprises, Inc., cannot be bound by the Consent Decree, because that would permit the FCC to exceed its subject matter jurisdiction, in derogation of the Communications Act of 1934. (Subject matter jurisdiction, unlike personal jurisdiction, can be raised at any time, even for the first time on appeal.)

The party also objects to the question because it is purportedly directed to "Avatar," but the definition of "Avatar" provided by the Enforcement Bureau encompasses companies and entities clearly outside the reasonable range of a question purportedly directed to Avatar Enterprises, Inc. By providing such an unreasonably broad definition of "Avatar," the Enforcement Bureau seems to assume that it is entitled to pierce the corporate veil without pleading and proving the same. The Enforcement Bureau defines "Avatar" as "Avatar Enterprises, Inc., any affiliate, d/b/a, predecessor-in-interest, parent company, wholly or partially owned subsidiary, successor-in-interest or other affiliated company or business, including but not limited to, BOI, Buzz Telecom and US Bell, and all directors, officers, employees, shareholders or agents, including consultants and any other persons working for or on behalf of any of the foregoing during the period February 11, 2004 through the present, unless otherwise noted." The Order to Show Cause, FCC 07-165, does not allege specific facts that would justify corporate

veil-piercing under existing law, and does not even allege that it is seeking to establish that Avatar Enterprises, Inc., is a sham corporate entity. Thus the inclusion of Avatar Enterprises, Inc.'s affiliates, parent companies, subsidiaries, etc., in the definition of "Avatar" is improper.

2. "Kurtis J. Kintzel is a director of Avatar."

Answer: Admitted, with respect to Avatar Enterprises, Inc. The party objects to the definition of "Avatar" provided by the Enforcement Bureau, as stated in the Answer to question 1.

3. "Kurtis J. Kintzel has been a director of Avatar during the period February 11, 2004 through the present."

Answer: Admitted, with respect to Avatar Enterprises, Inc. The party objects to the definition of "Avatar" provided by the Enforcement Bureau, as stated in the Answer to question 1.

4. Kurtis J. Kintzel holds a 72 percent equity interest in Buzz.

Answer: Admitted, with respect to Avatar Enterprises, Inc. The party objects to the definition of "Avatar" provided by the Enforcement Bureau, as stated in the Answer to question 1.

5. "Kurtis J. Kintzel has held a majority equity interest in BOI from February 11, 2004 through the present."

Answer: Admitted, with respect to Avatar Enterprises, Inc. The party objects to the definition of "Avatar" provided by the Enforcement Bureau, as stated in the Answer to question 1.

6. "Keanan Kintzel is a director of Avatar."

Answer: Admitted, with respect to Avatar Enterprises, Inc. The party objects to the

definition of "Avatar" provided by the Enforcement Bureau, as stated in the Answer to question 1.

7. "Keanan Kintzel has been a director of Avatar during the period February 11, 2004 through the present."

Answer: Admitted, with respect to Avatar Enterprises, Inc. The party objects to the definition of "Avatar" provided by the Enforcement Bureau, as stated in the Answer to question 1.

8. "Keanan Kintzel holds a 26 percent equity interest in Avatar."

Answer: Admitted, with respect to Avatar Enterprises, Inc. The party objects to the definition of "Avatar" provided by the Enforcement Bureau, as stated in the Answer to question 1.

9. "Keanan Kintzel has held a minority equity interest in Avatar from February 11, 2004 through the present."

Answer: Admitted, with respect to Avatar Enterprises, Inc. The party objects to the definition of "Avatar" provided by the Enforcement Bureau, as stated in the Answer to question 1.

10. "Avatar was an affiliate of Buzz during the period February 11, 2004 through the present."

Answer: Denied, with respect to Avatar Enterprises, Inc. The party objects to the definition of "Avatar" provided by the Enforcement Bureau, as stated in the Answer to question 1.

11. "Avatar was an affiliate of Buzz during the period February 11, 2004 through the present."

Answer: Denied, with respect to Avatar Enterprises, Inc. The party objects to the definition of "Avatar" provided by the Enforcement Bureau, as stated in the Answer to question 1.

12. "Avatar was an affiliate of US Bell during the period February 11, 2004 through the present."

Answer: Denied, with respect to Avatar Enterprises, Inc. The party objects to the definition of "Avatar" provided by the Enforcement Bureau, as stated in the Answer to question 1.

13. "Avatar, BOI, Buzz, US Bell and Link Technologies have been affiliates during the period February 11, 2004 through the present."

Answer: Denied, with respect to Avatar Enterprises, Inc. The party objects to the definition of "Avatar" provided by the Enforcement Bureau, as stated in the Answer to question 1.

14. "Avatar has not made all monthly payments toward the voluntary contribution due under the terms of the Consent Decree."

Answer: Objection; the question is improper because Avatar Enterprises, Inc., is not bound by the Consent Decree. The company is not subject to FCC oversight, thus the FCC exceeded its subject matter jurisdiction by attempting to bind Avatar Enterprises, Inc., to the Consent Decree. The party objects to the definition of "Avatar" provided by the Enforcement Bureau, as stated in the Answer to question 1.

15. "The Companies have not made all monthly payments toward the voluntary contribution due under the terms of the Consent Decree."

Answer: Objection; the question is improper because Avatar Enterprises, Inc., is not

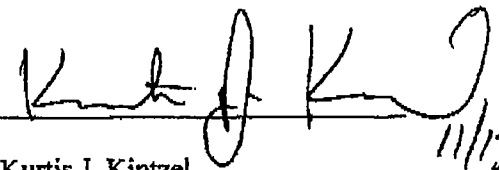
bound by the Consent Decree. The company is not subject to FCC oversight, thus the FCC exceeded its subject matter jurisdiction by attempting to bind Avatar Enterprises, Inc., to the Consent Decree. Avatar Enterprises, Inc., takes no further position on any matters affecting the Consent Decree. The party objects to the definition of "Avatar" provided by the Enforcement Bureau, as stated in the Answer to question 1.


16-21. "[Avatar or The Companies] failed to make the payments toward the \$510,000 voluntary contribution"

Answer: Objection; the question is improper because Avatar Enterprises, Inc., is not bound by the Consent Decree. The company is not subject to FCC oversight, thus the FCC exceeded its subject matter jurisdiction by attempting to bind Avatar Enterprises, Inc., to the Consent Decree. Avatar Enterprises, Inc., takes no further position on any matters affecting the Consent Decree. The party objects to the definition of "Avatar" provided by the Enforcement Bureau, as stated in the Answer to question 1.

SWORN STATEMENT

I hereby declare under penalty of perjury that the information supplied in the foregoing Answers is true to the best of my knowledge, information, and belief. The word choice and sentence structure may be those of the attorney and does not purport to be that of the executing parties. Discovery is not complete; the parties reserve the right to supplement their Answers if additional information comes to their attention.


Kurtis J. Kintzel
Director, Avatar Enterprises, Inc. 11/13/07


Catherine Park, Esq. (DC Bar # 492812)
The Law Office of Catherine Park
2300 M Street, NW, Suite 800
Washington, D.C. 20037
Phone: (202) 973-6479

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent for filing on this 14th day of November 2007, by hand delivery, to the following:

Marlene H. Dortch
Secretary
Federal Communications Commission
236 Massachusetts Avenue, NE
Suite 110
Washington, D.C. 20002

And served by U.S. Mail, First Class, on the following:

Richard L. Sippel, Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, SW, Room 1-C861
Washington, D.C. 20554

Hillary DeNigro, Chief
Michele Levy Berlove, Attorney
Investigations & Hearings Division, Enforcement Bureau
Federal Communications Commission
445 12th Street, SW, Room 4-C330
Washington, D.C. 20554



Catherine Park

CERTIFICATE OF SERVICE

Rebecca Lockhart, a Paralegal Specialist in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has, on this 4th day of December, 2007, sent by first class United States mail copies of the foregoing **Enforcement Bureau's Motion for Ruling on the Objections of Avatar Enterprises, Inc. to Request for Admissions of Fact and Genuineness of Documents** to:

Catherine Park, Esq.
2300 M Street, NW, Suite 800
Washington, D.C. 20037

Counsel for Kurtis J. Kintzel, Keanan Kintzel, Business Options, Inc., Buzz Telecom Corporation, US Bell, Inc., Link Technologies and Avatar Enterprises

A copy of the foregoing was also served via hand-delivery to:

Administrative Law Judge Richard L. Sippel
Federal Communications Commission
445 12th Street, S.W., Room 1-C861
Washington, D.C. 20054

Rebecca Lockhart
Rebecca Lockhart